REMARKS

This Supplemental Amendment is made in an effort to further the prosecution of the present application. By this Amendment, claims 1 and 12 are amended, and claim 34 is added. Currently pending claims 1, 4-32 and 34 are believed allowable, with claims 1, 12, 21, 23, 25, 27, 29 and 31 being independent claims.

Claims 1, 4-8, 10-18 and 20-32 were rejected under 35 U.S.C. § 102 in the Final Office Action dated May 21, 2009 as being anticipated by U.S. Patent Application Publication No. US 2002/0194010 ("Bergler").

The MPEP § 2131 defines the standard for anticipation as follows:

> The <u>identical invention</u> must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The <u>elements must be arranged as</u> <u>required by</u> <u>the claim</u>, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). MPEP § 2131 (emphasis added).

Claim 1 recites, in part, "allowing said use of the software product at the user device substantially only during a use period associated with a current data token representing the licence for the software product and supplied to the software controller by a licence management server, the licence management server communicating with the software controller via a data communications network."

The Examiner asserts that allowing use of a software product substantially only during a use period associated with a

current data token reads on paragraph [0020] of Bergler. The paragraph discloses:

> In a first implementation of the invention, when a client connects to a terminal server, the terminal server determines whether the client has been issued a license. If the client has not been issued a license, the terminal server assists the client in obtaining a license from a license server. If a license server is not available, the client is denied access to the terminal server resources. Assuming a license server is available and has an available license, the license is issued and pushed down to the client. Although the license is a permanent license, the license server assigns a random expiration date to the license. Thereafter, each time the client connects to the terminal server prior to the expiration date of the license, the client is permitted access to the server. When the client connects to the terminal server on or after the expiration date, the terminal server submits a license request to the license server. If the license server has an available license, it issues the available license with a new expiration date, and pushes the license down to the client. If the license server does not have an available license, no license is issued, and the client is denied access to the terminal server. Bergler, [0069] (emphasis added).

However, this is not what is claimed. The cited paragraph of Bergler does not provide identity of terminology and therefore it is the Examiner's burden to justify how allowing use of a software product at the user device substantially only during a use period associated with a current data token representing the licence for the software product and supplied to the software controller by a licence management server.

For example, Bergler does not disclose allowing use of a software product substantially only during a use period associated with a current data token. Berger states that if the license server does not have an available license, the client is

denied access to the terminal server. The Examiner has not explained how denying client access to a terminal server if the license server does not have an available license reads on allowing use of a software product substantially only during a use period associated with a current data token.

Furthermore, Bergler does not disclose a data token representing the licence for the software product having an associated use period. Bergler states that the license server assigns a random expiration date to the license. There is no discussion of a data token representing the licence for the software product, much less a data token having an associated use period.

Claim 1 is amended to recite, in part, "a software controller at a user device for controlling use of a software product at the user device." The Applicants submit Bergler does not disclose a software controller at the user device for controlling use of the software product, or an analogous element arranged as required by claim 1.

Specifically, the license server of Berger is disclosed to be remote from the clients and is configured to manage a license pool for a plurality of clients. Thus, the license server of Berger cannot read on the software controller recited in claim 1. In the case of an obviousness rejection, the Examiner should note that Bergler teaches away from the Applicants' invention, and because Bergler's principal of operation of would have to change, which is impermissible.

Claim 1 also recites, "enabling user access to an exchange token, dependent on the current data token supplied by the licence management server, whereby the exchange token can be supplied as a current data token to another said software

controller." In other words, the exchange token is used as a data token at another software controller.

The Examiner notes that Berger discloses at paragraph [0086]:

> If the license server 108 is available (operation 442), the terminal server 112 automatically makes a license request at operation 410. The license server 108 receives the request at operation 412 (FIG. 4B), and determines at operation 414 that the client 110 has been licensed before, but that its permanent license has expired. Therefore, the license server 108 searches the available license pool 314 and attempts to locate the client's expired or "same" permanent license (operation 414). If this "same" license has not been issued to a different client, it will be available in the available license pool 314 for updating and issuing to the same client. The license server 108 would therefore reset the expiration date and reissue the "same" license to the client 110 at operation 436. The updated "same" license would then be pushed down to the client 110 through the terminal server 112 to the client 110.

Again, this is not what is claimed. Berger teaches that once a permanent license is expired, the license server searches the available license pool and attempts to issue the same license to the client. There is no teaching of an exchange token used as a data token at another software controller.

As all the recitations of the claim were not met, the prima facie case of anticipation fails since the identical invention is not shown in as complete detail as is contained in claim 1, as required by MPEP § 2131. Independent claims 12, 21, 23, 25, 27, 29 and 31 recite similar recitations as claim 1.

CONCLUSION

In view of the forgoing remarks, it is respectfully submitted that this case is now in condition for allowance and such action is respectfully requested. If any points remain at issue that the Examiner feels could best be resolved by a telephone interview, the Examiner is urged to contact the attorney below.

No fee is believed due with this Amendment, however, should such a fee be required please charge Deposit Account 50-0510 the required fee. Should any extensions of time be required, please consider this a petition thereof and charge Deposit Account 50-0510 the required fee.

Respectfully submitted,

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